

IN THE MATTER OF	:	BEFORE THE
<b>JOHN P. SEGALA AND</b>	:	HOWARD COUNTY
<b>JENNIFER R. SEGALA</b>	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 08-038V

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**DECISION AND ORDER**

On September 15, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of John P. Segala and Jennifer R. Segala for a variance to reduce the 30-foot setback to 16 feet for a proposed addition and deck to be constructed to the rear and side of a single-family detached dwelling in an R-20 (Residential: Single-Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, represented the Petitioner. John P. Segala testified in favor of the petition. No one testified in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The .391-acre, irregular shaped property is located on the northwest side of Stone Hill Drive about 300 feet northeast of MD 103, and is also known as 5013 Stone Hill Drive (the

2. "Property"). The Property lies in the 8<sup>th</sup> Election District and is identified on Tax Map 31, Grid 14, as Parcel 103, Lot 34. It is part of the Stone Hill Farm subdivision.

3. The front lot line is about 166 feet wide, the rear lot line, about 150 feet. The northernmost lot line adjoining an Open Space Lot is about 80 feet deep, the southernmost lot line, about 150 feet. It is improved with a two-story single-family detached dwelling, which is situated in the western corner of the lot and almost touches the rear and side setbacks. Access is provided via a driveway lying near the south lot line and ending at a one-car attached garage.

4. Vicinal Properties. Adjacent properties are also zoned R-20. The property to the northeast is a narrow Open Space lot. Those to the east, southeast and southwest are improved with single-family dwellings and are part of the same subdivision.

5. The Petitioner is requesting a variance from Sections 108.D.4.c(1) and 128.1.d to construct a rear kitchen addition and deck. According to the variance plan attached to the petition, the proposed rear addition is 16' x' 16' in size and would replace the existing deck. A new deck would be constructed to its north side.

6. Referring to Petitioner's Exhibit 1, Mr. Segala testified that area properties are deeper, allowing owners to construct rear additions and decks without variances. Explaining the property, he stated the Property's somewhat triangular shape caused the dwelling to be located right at the setbacks and that any addition would require a variance. He also agreed to replace any of the four trees running along the rear lot line near the proposed addition and deck as a condition of approval.

#### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance for the addition and deck complies with Section 130.B.2.a and therefore may be granted.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424

(1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

1. In this case, there is no dispute that the lot is irregularly shaped. Consequently, I conclude the Property's shape is a unique physical condition causing the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The proposed addition and deck will be used for a permitted purpose. As the evidence shows, and as I observed, many neighboring dwellings have additions and decks. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulties in complying strictly with the setback regulation arise from the Property's shape and was not created by the Petitioners, in accordance with Section 130.B.2.a(3).

4. The proposed use of the addition as a kitchen and deck is a reasonable use. Within the intent and purpose of the regulations, then, the variance, while pushing the limit of what zoning law means by the "minimum necessary to afford relief," meets the requirements of Section 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this 6<sup>th</sup> Day of October 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of John P. Segala & Jennifer R. Segala for a variance to reduce the 30 - foot rear setback to 16 feet for an addition and deck is **GRANTED**;

**Provided, however, that:**

1. The Petitioner shall replace any of the four trees along the rear lot line damaged or destroyed during the construction of the addition or deck.
2. The variance shall apply only to the addition and deck described in the petition submitted and not to any gazebo or other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
Michele L. LeFaivre

**Date Mailed:** 10/7/08

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.